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ELEVENTH PARLIAMENT – FOURTH SESSION

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REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,  
COMMERCE & BUDGET ON THE MEDIUM TERM BUDGET POLICY  
STATEMENT, 2016

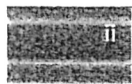
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PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2016

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## PREFACE

**Mr. Speaker Sir**, on behalf of the Members of the Finance, Commerce and Budget Committee and as required under the second schedule of the Senate Standing Orders, I hereby present to this House, the Committee's Report on the 2016/17 Medium term Budget Policy Statement which was submitted to this House on 15<sup>th</sup> of February, 2016.

Upon submission to the House, the Medium term Budget Policy Statement (BPS) was committed to each Standing Committee to deliberate upon and make recommendations to the Finance, Commerce and Budget Committee in relation to their respective mandates. In considering the Statement, the Finance, Commerce and Budget Committee consulted each Standing Committee and hereby tables a report, containing its recommendations on the BPS to the House for consideration and approval.

**Mr. Speaker Sir**, it is significant to mention that the purpose of the approval of this report on the Medium term Budget Policy Statement is to communicate the Senate's position on the preparation of all subsequent budget documents for the remainder of the financial year beginning with the Division of Revenue Bill, 2016. It is also important to note that section 25 of the Public Finance Management Act, 2012, stipulates that the resolutions of Parliament, comprising both Houses, on the BPS must inform the preparation of the Annual Estimates and therefore by extension, this House's resolutions on this report will form the basis of evaluating the 2016/17 estimates for the various spending agencies at both national and devolved level.

### **Mr. Speaker Sir,**

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- A. Discuss and review the estimates of County governments and make recommendations to the Senate;
- B. Examine the Medium term Budget Policy Statement presented to the Senate;
- C. Examine and report on the Budget allocated to constitutional commissions and independent offices;
- D. Examine bills related to the Counties;
- E. Examine the Budget, including the Division of Revenue Bill; and
- F. Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters

concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.

**Mr. Speaker Sir,**

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13<sup>th</sup> March 2014 during the Second Session of the Eleventh (11<sup>th</sup>) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MBS, MP. -Chairperson
2. The Hon. Sen. Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP.
10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP.

The Finance, Commerce and Budget Committee is further given legal backing under the Public Finance Management Act, 2012 as well as the Constitution.

## **EXAMINATION OF THE MEDIUM TERM BUDGET POLICY STATEMENT**

In reviewing the 2016 Medium Term Budget Policy Statement, the Committee held four sittings, one of which the Cabinet Secretary, National Treasury was invited to give his views and clarify matters arising from the BPS. The Committee also received submissions from the various Standing Committees and held extensive discussions with the respective Chairpersons.

Mr. Speaker Sir,

## RECOMMENDATIONS

- 1) **Mr. Speaker Sir**, The Committee received useful submissions from all the Standing Committees of the Senate. The committees made significant observations on the BPS policy proposals for the 2016/17 and the medium term, identifying broad policy issues with great impact on counties, the issue of county functions held by the National Government and proposals on revenue allocation.
- 2) **Mr. Speaker Sir** from the perspective of the Senate Committees and the role of Senate in protecting the interest of counties, the broad issues in this years BPS can be categorized as follows:
  - (i) National policies and programmes that have a direct impact on economic performance of counties;
  - (ii) Outstanding transfer of county functions alongside additional financing; and,
  - (iii) Proposals on division of revenue between the two levels of government and among counties for the 2016/17 financial year.
- 3) **Consequently, Mr. Speaker Sir**, the Committee recommends as follows;

### A. Enabling National Policies and Programmes

In order to enhance the economic performance of county and national governments the Committee recommends as follows:

- i. Synchronization of social safety net funds at the national and county level through establishment of a common single register and a review of the disbursement arrangements to give counties conditional grants and assign them the responsibilities of disbursing the funds;
- ii. That indicative programme outputs/ outcomes be provided by National Treasury without delay to facilitate proper scrutiny and interrogation of the BPS and estimates to guide specific recommendations;

- iii. That the National Treasury should consider amendments to the PFM Act, 2012 and the Constitution to give Parliament and other concerned agencies a longer period to consider the Budget Policy Statement;
- iv. The Preventive, Promotive, and RMNCAH (RMNCAH refers to reproductive, maternal, neonatal, child and adolescent Health) Programme should be reviewed to ensure the function is done primarily by the county government such as promoting primary healthcare and environmental health care under the mandate of the county governments;
- v. Implementation of the Managed Equipment Services projects should be hastened and achievable targets set;
- vi. Uptake of renewable energy such as biogas and alternative sources of energy such as solar and wind among the majority of Kenyans is important. The Ministry's outreach programme to propagate and disseminate available renewable energy technologies is done through Energy Centres that currently number 16 centres. There is need to extend this outreach with a view to cover all the counties;
- vii. The State Department of Livestock's programme of livestock resource management and development will have its Vote reduced from 7.1 billion to 6.8 billion. 80% of Kenya is Arid and Semi Arid Lands (ASAL) and 60% of livestock is supporting over 10 million people as the only source of livelihood. The Committee is of the opinion that additional funds should be added to this Vote. This will assist with functions such as increased value addition, establishment of Livestock Disease Free Zones (DFZ), Fast-track Modernization of the -Kenya Meat Commission to increase output and efficiency and enable the Country to meet demand of an expanding export market;
- viii. The Judiciary should prioritize completion of courts under construction before starting new projects;
- ix. Encouraging the use of technology based strategies to reduce the backlog of court cases;

- x. In addition, the Judiciary and other Government Agencies should be facilitated with timely releases of Exchequer particularly on development expenditure to allow smooth implementation of capital projects;
- xi. Fast tracking and completion of the National Policy on Public Participation and related relevant legislation in accordance with Article 118 of the Constitution;
- xii. That due to plans by the Office of the Director of Public Prosecutions to establish fifteen prosecution offices in Counties to support its prosecution services, allocations to the office be enhanced;
- xiii. More resources should be allocated towards Independent Electoral and Boundaries Commission to enable the Commission prepare for 2017 General Elections in time, and register 8 million new voters as well as any planned procurement of electronic equipment before next General Elections;
- xiv. That the leasing of motor vehicles by the police and the housing project be domiciled under the National Police Service Commission, and in addition should be fast tracked to bring efficiency in the police service;
- xv. In order for the Ministry of Foreign Affairs and International Trade to deliver on its mandate with the reduced resource allocation, it should rationalise foreign missions in strategic countries in line Kenya's economic, international and diplomatic objectives;
- xvi. That a policy should be put in place to guide capital expenditures of foreign missions especially where exorbitant costs are accrued on rental properties;
- xvii. That to realize the Sustainable Development Goal (SDG's) of ensuring inclusive and equitable quality of education and promoting lifelong opportunities for learners, TSC's budgetary allocation be enhanced to enable it employ at least 25,000 teachers in 2016/2017;

- xviii. The Ministry of Education, Science and Technology to review policies and guidelines for Early Childhood Education to ensure uniform standards across all counties and funds be allocated to this effect;
- xix. That the Ministry of ICT prioritizes the allocations (especially under ICT Infrastructure Development programme) towards fast tracking development of horizontal and basic infrastructure in Konza City; completion of County Connectivity Projects in the shortest time possible and enhancing the implementation of the second phase of National Optic Fiber Backbone Infrastructure with a clear policy on the last mile connectivity; and, the ministry liaising with KPLC to exploit the KPLC fibre to improve and supplement connectivity, among others;
- xx. That the Universal Access Fund initiatives including the undertaking of the second access gap study be rolled out immediately, with the aim of ensuring Kenyans in remote and unserved areas get access to mobile and internet connectivity and other ICT infrastructure activities as envisioned in the fund objectives;
- xxi. That Ksh. 3.778 billion be reallocated for the program on Integrated Regional Development under the State Department for Environment, Natural Resources and Regional Development to the respective counties;
- xxii. That the Budget Policy Statement should state exactly when the second (2<sup>nd</sup>) phase (Nairobi-Naivasha) of construction of the Standard Gauge Railway will begin and the exact route it will follow including extension to Kisumu.

#### **B. Mr. Speaker Sir, on the Transfer of outstanding county functions**

From its deliberations with the Sectoral Committees of Senate and the comments by the Council of Governors, the Committee noted that several county functions were still being carried out by the National Government in the absence of mutual transfer as envisioned in Article 187 of the Constitution. Thus, the Committee recommends that:

- xxiii. All county health functions be transferred fully, including free maternity program, slum health upgrade and cancer mitigation and control;
- xxiv. That the programs on crop development and productivity; agribusiness and information management; irrigation and land reclamation, fisheries development; livestock resources management and development and cooperatives development and management be transferred to county governments;
- xxv. That key components of functions in the Ministry of Sports Culture and Arts such as library services be transferred to county governments;
- xxvi. That a legal framework that clearly spells out what constitutes a county function and national function be in place to avoid duplication, particularly under the Ministry of Sports, Culture and the Arts;
- xxvii. Agriculture is a fully devolved function and with functions going to counties, administrative cost at National Government should decrease because the Fourth Schedule of the Constitution clearly indicates that National Government's role in Agriculture is policy and research.

### **C. Mr. Speaker Sir, on the Division of Revenue**

Briefly, on account of the BPS, DORB and sectoral committee recommendations, the Committee recommends that revenue allocations for 2016/17 be based on the following:

- xxviii. That subject to (B(1)) above, conditional allocations as per Article 202 need to be kept at a minimum in view of Article 187 on transfer of functions between levels of government. In particular, conditional allocations should only address critical issues which would not be funded in any other way. Thus, the justifiable conditional allocations should be Level 5 Hospitals, Free Maternal health Care, Compensation for user fees forgone, leasing of medical equipment and 15% of Road Fuel Levy Fund;

- xxix. The Committee notes that some county roads functions are still held by the National Government through the KURA and KERRA. The Committee therefore proposes that the equitable revenue share be enhanced to finance county roads in lines with the recommendation of the CRA;
- xxx. The Committee notes that the BPS uses a very conservative revenue growth rate in the computation of the equitable revenue share. Actual revenue realization seems to differ from the growths used in the BPS. Thus the Committee recommends that the official rate of growth of revenue should be used at the minimum to compute the equitable share for 2016/17;
- xxxi. The Committee observed the need to maintain a stable macroeconomic and fiscal environment of the Kenyan economy. In particular, the Committee is concerned by rising debt burden in the face of weak revenue performance. Therefore, the Committee recommends that the National Government prioritize its expenditure in the face of county allocations to avoid revenue shortfalls, fiscal deficits, excessive borrowing and in-year budget cuts;
- xxxii. The Committee noted serious under performance of revenues in the current financial year owing to internal administrative weaknesses of the Kenya Revenue Authority (KRA). The Committee therefore recommends an urgent review of the operations of KRA with a view to ensuring efficient, timely and prudent collection of revenues;
- xxxiii. Equally, the Committee urges enhanced fiscal prudence and austerity whenever necessary by both levels of government to enhance efficiency and productivity of public spending. Annual incrementalism in budgets at either level of government is therefore discouraged;
- xxxiv. That the National Treasury should strictly adhere to the approved county cash disbursement schedule and give priority to County disbursements. In addition, there is also need to prioritize and

consider critical aspects of some functions like maternity services in the health sector;

- xxxv. That resources be provided to the Ministry of Education, Science and Technology to ensure each county has at least one nationally funded one TVET institution. This will ensure equity in the provision of TVET education, which is very critical towards the realization of vision 2030.

## ACKNOWLEDGEMENT

**Mr. Speaker Sir,**

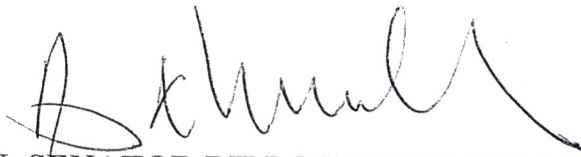
The Committee is grateful to both the Cabinet Secretary and the Principal Secretary, National Treasury, the Commission on Revenue Allocation (CRA) who appeared before the Committee and also acknowledges the contributions made via written submissions by various stakeholders.

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate as well as to the Parliamentary Budget Office for the support received as it discharged its mandate of examining the 2016 Medium term Budget Policy Statement as well as to the Senators who participated in the process.

**Mr. Speaker Sir,**

It is therefore my pleasant duty and privilege, on behalf of the Finance, Commerce and Budget Committee to table this Report and recommend it to the House for adoption.

Signed



**THE HON. SENATOR BILLOW KERROW, MP  
CHAIRMAN, FINANCE, COMMERCE AND BUDGET COMMITTEE**

**Date: 25<sup>th</sup> February, 2016**



## I. INTRODUCTION

- 4) **Mr. Speaker Sir**, the Medium term Budget Policy Statement (BPS) is perhaps the most critical document in the budget cycle that is prepared by the National Treasury because it is the basis upon which all subsequent budget documents are prepared. It is also the first stage at which Parliament, and by extension, the public whom we represent, gets a feel of the main areas of expenditure as well as revenue policies and debt levels that form the coming financial year.
- 5) In brief, the document is supposed to set out the broad objectives, policy goals and strategic priorities that guide the National and County Governments in preparing their budgets both for the following financial year and over the medium term.
- 6) Pursuant to Section 25 of the PFM Act, 2012 and PFM Regulations, 2015, the Committee assessed compliance to these provisions. The National Treasury is required to prepare and submit the BPS to Parliament by 15<sup>th</sup> February each year.
- 7) **Mr. Speaker Sir**, as provided in law, the key contents of the BPS include the following:
  - i. An assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic outlook.
  - ii. Financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term.
  - iii. The proposed expenditure ceilings for the 3 arms of Government and indicative transfers to County Government.
  - iv. The fiscal responsibility principles and financial objectives over the medium term including limits on total annual debt.
  - v. The total resources to be allocated to individual programmes and projects within sector, ministries, departments and agencies indicating outputs expected during the period.
- 8) The role of Senate in the review and approval of government economic and spending policies contained in the BPS are clearly buttressed in the functions of the Senate as set out in Article 96 of the Constitution. The BPS sets out the annual revenue amounts in a 3-year period to be raised by the National Government; these are invariably the resources that are actually allocated to each level of government including counties (Article 203).

- 9) The Senate's role therefore spans protecting the financing of counties, ensuring unified economic policies and prosperity in counties for the benefit of all Kenyans, and to improve national and intra-county business climate. Thus, there is an overwhelming case for Senate to pronounce itself on any matter it deems fit as articulated in the BPS.

## II. REVIEW OF THE 2016 BPS

- 10) The Budget Policy Statement (BPS) is submitted to Parliament pursuant to section 25 of Public Finance Management Act, 2012. The purpose of the BPS is to provide strategic priorities and policy goals that will guide the National and County Government in preparing their Budgets.
- 11) More specifically, the BPS aims at providing policies to sustain prosperity, recent macroeconomic development with special focus on domestic and global outlook, fiscal policy underpinning the FY2016/17 Budget and the Medium Term. In addition, it also provides direction with regard to county financial management and division of revenue.
- 12) The Committee reviewed the five policy pillars, and considers them as critical since they set out the broad government policies and proposed reforms that in many ways will affect the economic and expenditure plans of counties.
- 13) To expedite the review, the Committee critically reviewed the policies and medium term fiscal framework including the proposed sharing of revenue and made concise opinions about them and specific recommendations on a set of issues. The recommendations are mainly decanted from the deliberations of Senate Standing Committees and the meetings with the CS, National Treasury on 18<sup>th</sup> February, 2016.
- 14) The following sections briefly expound on the level of compliance of the BPS with existing regulations and procedures. The subsequent sections assess the five policy pillars, followed by a review of macroeconomic proposals, expenditure, revenue, and revenue sharing proposals. The review of BPS is followed by the Standing Committees' review and resolutions on various sectoral policy issues, which serves as a prelude to the general and specific recommendations of the Finance Committee.

### III. POLICIES TO SUSTAIN PROSPERITY IN A VOLATILE GLOBAL ECONOMY

#### a) *Overview*

- 15) The 2014 BPS set the five-pillar transformation program of the Government for implementation over a three-year period and the 2015 BPS reaffirmed these broad policies and strategies. The 2016 BPS has slightly revised the contents of the five pillars making it hard to track the progress of some of the policies.
- 16) Further, the linkage between the Budget Policy Statement and the County Fiscal Strategy Papers is still weak despite the requirements set out section 117(2) of the Public Finance Management Act, 2012. Three of the five pillars have a direct impact on the functions of the county governments but no mechanism to align the national objectives to the county priorities has been proposed in the BPS.

#### b) *Pillar 1: Sustaining Conducive Business Environment for Investment Opportunities*

- 17) The areas of focus of this pillar will be maintaining macroeconomic stability and improving security so as to encourage investment opportunities in the country.
- 18) The specific focus will be the quest to achieve macroeconomic stability by pursuing prudent fiscal and monetary policies that will support accelerated inclusive growth and development. To better harmonize the fiscal and monetary policies, the National Treasury, Central Bank and Kenya Revenue Authority will improve on coordination through periodic meetings of their leadership.
- 19) The fiscal policy will aim at strengthening the revenue effort, contain the growth of total expenditure, shift composition of expenditure from recurrent to capital expenditure, and eliminating unproductive expenditures. The fiscal policy will also target to rationalize and align resources to priority programmes to ensure outcomes are delivered cheaply and efficiently.
- 20) The monetary policy will aim to maintain inflation within the 5%±2.5 target, strengthen the international reserves position to over 4.5 months of import cover, stabilize interest rates to provide space for increased private sector credit, and a competitive exchange rate to support productive activities.

- 21) The committee notes with concern that the fiscal policy target of reducing the fiscal deficit in line with the EAC target of 3% of GDP by 2020/21 requires the growth of expenditures to be contained and a subsequent shift of resources from recurrent to capital expenditure. The reduction in growth of expenditure is laudable considering the government plans to cut down on expenditures in 2016/17, there is no clear policy guideline on how the expenditure reorientation shall be done.
- 22) The BPS 2016 indicates that stabilization of interest rates and exchange rates in 2015 was largely due to accumulation of foreign debt. Even though this may be feasible in the short term, it may not be sustainable in the long term as Government is required to continue raising finances to implement project to and also pay off maturing debt instrument contracted on the international capital market.

### *Enhancing Security for Sustained Growth and Employment*

- 23) The government targets to invest in security infrastructure including housing, offices, security installations, mobility, and training facilities. It also plans to continue police welfare improvement through comprehensive medical cover and building capacity of security agencies in key security functions (field operations, investigation, education, enforcement and professionalism). Recruitment of more judges and magistrates to reduce case backlogs by 100% will improve delivery of justice. Finally the government aims to improve coordination among security agencies; and enhance stronger partnership with communities.

The committee notes the following:

- i. **Police housing units** – Previous Budget Policy Statements highlighted the construction for police housing units as a key target. The BPS 2014 and BPS 2015 indicated the government’s promise to construct 15,000 housing units over the medium term for National Police Service, Kenya Defence Forces and Prisons. However, the government is yet to present a status of these projects.
- ii. **Security modernization** – The government proposed to adopt ICT infrastructure in enhancing security in the country in previous BPSs. However, the status of these projects has not been highlighted in the BPS 2016 despite huge allocations in previous years.

c) *Pillar II: Continued Investment in Infrastructure to unlock constraints to growth*

**Further Expanding of Road Network**

- 24) The government strategy is to provide an effective, efficient and secure road network. To achieve this, it plans to step up road safety and regulation, construct 3,800 km of low volume seal roads in the rural areas, continue expansion of major roads in urban centers and prioritize construction of major international link roads. Further, it aims at creating an independent body to audit and certify construction and maintenance of roads beginning with the National Road Network.
- 25) The BPS 2016 highlighted the strategy to de-congest the City of Nairobi through completion of the Outer-ring Road and partnership with the Nairobi City County to fast-track the realization of the Nairobi Mass Rapid Transport System.
- 26) The key international link roads to be prioritized include the East Africa Road Network (Voi-Mwatate-Wundanyi road, Malindi-Mombasa-Lunga Lunga road); the Kisumu-Kakamega road and the 600km South Sudan Link Road.

*The committee notes that the BPS 2016 has failed to detail the timelines for the completion of some of the roads projects. With most of these roads being part of the MTP II targets, their status will greatly impact on the performance of the Vision 2030. Further, the transfer of management of county roads to the devolved governments has not yet been done and this may affect proper management of these roads.*

**Rail, Marine and Air Transport**

- 27) **Rail Transport** – The Mombasa-Nairobi (Standard Gauge Railway) SGR is over 60% complete and set to be completed by mid-2017. The government is currently in the process of securing funding for an extension from Nairobi to Naivasha. The BPS also highlighted the plan to upgrade and modernize the urban commuter mass transit system through Public Private Partnership (PPP).
- 28) **Sea Ports** – The BPS 2016 strategy rides on the progress made in modernization of the Port of Mombasa including the expansion of the terminals and cargo areas, and the near completion of the second container terminal (expected in early 2016), and the integration of the single window system. The government plans to further dredge the port and improve the road networks in and out of the port.

- 29) **Lamu Port and Southern Sudan-Ethiopia Transport (LAPSSET)** – The government aims at prioritizing the construction of a modern pipeline from Lamu to the oil exploration locations in the region through Public Private Partnership (PPP).
- 30) **Airports** – The BPS highlighted the progress made in expansion of Jomo Kenyatta International Airport (JKIA) and rehabilitation of five airstrips (Nanyuki, Ikanga, Lodwar, Embu and Malindi). The JKIA Terminal 1A is near completion and the government aims to commission the new terminal 1E. Further, work is expected to commence on the Second Runway with expected completion by end of 2018.

### **Access to adequate affordable and reliable energy supply**

- 31) The BPS 2016 targets to provide affordable and competitive electrical energy through the programme aimed at generating additional 5,000MW of power by end of 2017. Some of the key projects targeted for the medium term include the 987MW Lamu Coal Power Project; 300MW Turkana Wind Project; and 300MW Kitui Coal Project aimed at achieving a target of 4,385MW by 2017.
- 32) The Government aims at achieving a target of connecting at least 70% of Kenyan Households and reduce connection costs and time by 60% by 2017. The government also aims at rolling out a programme on green biomass digester bag technology in at least 100,000 households as well as reviewing the policy on solar to facilitate its expansion.

#### ***The Committee notes with concern that:***

- i. The progress made with regard to the 5000MW power project targeted for completion in 2017 is only 12% since 2014. This indicates that the project targets may be highly unlikely to be achieved within the current time span and may ultimately increase the cost of the projection.
- ii. Government has not fully exploited the solar power even though this is readily available in the country. Government should consider fast tracking the policy on solar and come up with measures to encourage solar power generation especially for the off-grid areas of the country, which are also the semi-arid parts of the country with abundant solar energy.

*d) Pillar III: Sustained sectoral spending for employment creation*

**Agricultural Transformation to sustain growth**

- 33) The Government plans to prioritize investments research and extension services, agro-ecological zoning and re-organization of farmers into viable cluster groups for economies of scale; establish Disease Free Zones facilities (Bachuma, Kurawa, Miritini); finalize procurement of offshore patrol vessel (OPV); complete the fertilizer manufacturing plant by September 2016; and increase the acreage in the Galana/Kulalu Ranch Irrigation from the pilot 10,000 acres to 100,000 acres.

The Committee observed with concern that:

- i. The Galana/Kulalu irrigation project though identified as a flagship project for the agricultural sector still faces numerous challenges. In this regard, Government needs to assess the viability of the project.
- ii. The BPS 2016 even though the agricultural sector is devolved, the strategies that may have to be implemented by the country government still falls under the national government. Further, the BPS highlights prioritization of extensions services but doesn't mention what the key activities by the county government in implementing the agricultural extension services.

**Supporting growth of manufacturing for employment creation**

- 34) Government proposes to prioritize the establishment of industrial and technology parks in Eldoret, Juja and Taita-Taveta to catalyze innovation and value addition. It also plans to establish green industrial parks under the Special Economic Zones along the railway lines. Further, it plans to develop a framework for applied technology and artisan training to improve technical skills.

**Tourism, Sports, Culture and Arts**

- 35) **Tourism** – the sector has been boosted by withdrawal of travel advisories by key tourist source countries. The BPS 2016 indicates the government's focus will be on improvement of security, tourism promotion and marketing and continued investment in conference tourism facilities in Nairobi, Coast and Western Kenya.

- 36) **Sports and Arts** – The government plans to construct the five stadia through Public Private Partnership (PPP), review the sports policy and legislation and create awareness on anti-doping issues. Further, it sets to roll out incentive packages to ensure film and music flourishes in Kenya.

The Committee observes with concern that:

- i. The Government is required to put in place an anti-doping legislation by early 2016 or risk being banned from international sporting events. This may adversely affect sports in the country.

*e) Pillar IV: Sustained Investment in Social Services for the welfare of Kenyans*

**Healthcare**

- 37) The strategy focuses on implementation of the Health transformation agenda. This will include scaling up universal health coverage initiatives (free maternity service and free basic healthcare services); equipment modernization in 94 hospitals; reduce morbidity and mortality rates from Malaria, HIV/AIDS, TB and non-communicable diseases, recruit more health workers and strengthen health research.

The Committee notes with concern that:

- i. The BPS 2016 does not clearly indicate the interventions that government wishes to undertake in 2016/17 and the medium term to achieve the healthcare transformation agenda.
- ii. Despite the healthcare functions being largely devolved, the BPS 2016 does not indicate how the national government's strategy will impact on the functions of the county levels.

**Quality and relevant Education for all Kenyans**

- 38) The strategy will include improvement and expansion of institution infrastructure; integration of ICT curriculum in all levels of education; increase finances to fully fund primary, secondary and tertiary education, and strengthen quality controls.

The government will also carry out national skills survey with aim of developing a national and ministerial human resource development plan. Further, it will align education and training curricula to the demands of the labour markets by developing competency based education and training for TVET and revitalizing youth polytechnics.

### **Scaling up social safety nets**

- 39) The government targets to train and empower persons with disability for self-reliance, develop a Community Development Integrated Management Information System; provide education support to Orphans and Vulnerable Children(OVCs), increase the number of counties linked to the single registry for the National Safety Net Programme from 10 to 25, and set up a national safety net complaint and grievance structure.
- 40) The government also aims at increasing the number of beneficiaries in cash transfer programmes from 717,000 in 2015/16 to 1,707,000 in 2018/19. This will increase the coverage for households with older persons from 310,000 to 760,000; the household with OVCs from 360,000 to 810,000 and persons with severe disability from 47,000 to 137,000.

### **Empowering Youth, Women and Persons with Disability for employment creation**

- 41) The BPS 2016 indicates that in the year 2016/17, 21,870 youth will be trained by NYS and another 150,000 through social transformation programme; 300 community youth SACCOs will be registered, 5,000 youth will be mentored on leadership and national values; and 30,000 youth will be sensitized on entrepreneurship skills and social vices. The government will also construct 40 youth polytechnics and disseminate Ksh 6 billion through the UWEZO Fund to benefit Youth, Women and Persons with Disabilities.

The Committee notes that the issue of merging of funds is paramount. In this aspect, government is providing multiple funds to support Women, Youth and Persons with Disability including the Uwezo Fund, Youth Development Fund, Women Development Fund, among others. However, the multiplicity of these funds may lead to duplication of some of their targeted interventions. The report of the Presidential Taskforce of Parastatal Reforms has therefore proposed the merger of these funds into one to ensure better management and accountability.

## Environmental Conservation and Making Water Accessible

- 42) The strategy will prioritize implementation of programs under the Growth Initiative. The government will also ensure that an Environmental Impact Assessment is undertaken on all projects. To mitigate the impact of climate change, government will invest in re-forestation, roll out water harvesting and storage in all public institutions, and invest in green energy. Further, government will target construction and rehabilitation of water pans, and investment in mini-dams and mid-size dams to store water for household and agricultural use.

### *f) Pillar V: Further Entrenching Devolution for Better Service Delivery*

- 43) The National Government will continue supporting the devolved structures by increasing their allocation of sharable revenues, strengthen accountability and fiscal discipline in use of resources, and implement a strategy to enhance county revenue raising measures and correct duplication and distortion in local taxes and fees. Some of the initiatives to be put in place include: sensitization of public officers and general public on Public Audit Act, Procurement and Asset Disposal Act, and PFM Regulations; prioritization of disbursement to counties with the least fund balances at the CBK; and strengthen the linkage between planning, budgeting and implementation at both levels of government in line with development plans.
- 44) Further, the National Treasury through the Intergovernmental Budget and Economic Council (IBEC) will initiate development of a national legislation to support enhancement of county own-source revenue and comprehensively review and harmonize all existing county revenue legislations.
- 45) One key concern of the Committee is the non-adherence to the approved cash disbursement schedule by the National Treasury. This has led to delay in disbursement of funds thereby affecting county government budget execution. Arising from this problem, some county governments have resorted to borrowing (through the overdraft window) from commercial banks at high interest rates.
- 46) The Committee also noted with great concern the delays in disbursing conditional grants to the counties particularly in the health sector. The Council of Governors informed the Committee that conditional funds captured in the 2014/2015, 2015/2016 financial years under the Ministry of Health were yet to be fully disbursed. Under the Free Maternity program for example, the Ministry was yet to



disburse Ksh. 7.530 billion; having only only disbursed Ksh. 1.47 billion in the last two years. No disbursement for Free Maternity Services had been received for the financial year 2015/2016.

#### IV. RECENT ECONOMIC DEVELOPMENTS AND POLICY OUTLOOK

##### a) *Economic Growth*

- 47) The IMF projects the global growth will stand at 3.1% in 2015 and rise to 3.6% in 2016. This is as a result of the improved growth in the advanced economies. The growth in the emerging and developing economies is projected to slow down on account of an expected decline in the economic growth for China.
- 48) Countries in Sub-Saharan Africa are expected to experience lower growth of 3.5% in 2015 especially those that export oil as a result of the low oil prices in the global market. Declining commodity prices and lower demand from China is also likely to affect growth in this region. There will be improved growth in 2016 at 4.0% and 4.7% in 2017 resulting from sustained infrastructure investment.
- 49) For the first three quarters of 2015, the economy grew at an average of 5.4 compared to 5.3% during the same period in 2016. The sectors with the highest growth rates include sectors that have the highest growth so far are Construction (11.8%), Electricity & Water (9.9%), Financial Intermediation (9.4%), and Mining & Quarrying (8.2%). The growth in other key sectors such as Agriculture & Forestry and Accommodation & Food services has averaged at 5.6% and -3.5% respectively.
- 50) According to the BPS 2016, the economy is projected to grow at 5.6% in 2015, 6.0% in 2016 and 6.5% in the medium term. In terms of Financial Years, the growth is estimated to be 5.5% in 2014/15, 5.8% in 2015/16 and 6.1% in 2016/17. This growth is premised on increased production in agriculture on account of favorable weather, completion of infrastructure projects, recovery of the Tourism sector, enhanced private consumption, investor confidence which will boost domestic demand and deepening of the regional integration.
- 51) The committee observes the following:
- i. Over the years, the Budget Policy Statements have had optimistic targets for economic growth which are based on various assumptions. Consequently, this has led to higher projections of revenues giving more space for increases in expenditure. However, the trend has been that most of the economic growth targets have not been achieved forcing revision of revenue projections

downwards. This in turn has resulted to expenditure cuts or more accumulation of debt to fund the Government budget.

- ii. Enhanced private consumption is one of the assumptions of achieving a 6.1% economic growth in 2016/17. Despite the fact that, over the years, private consumption has been a key driver of economic growth, a huge part of this consumption is import driven. It has therefore not improved the standards of living of a majority of the citizenry and has also increased the country's susceptibility to external economic shocks such as instability of the exchange rate.
- iii. In the BPS 2015 and 2016 BPS, a key assumption has been an increased agricultural production on account of favorable weather. This assumption may not hold given drastic change in weather patterns. Further, a favorable weather does not guarantee increased agricultural production. Indeed, there are other factors that affect agricultural production such as land fragmentation, transfer of technology, the efficient processing and marketing of agricultural products, abolition of cartels, among others. Therefore, there is a need to relook at the Country's Agricultural Policy to come up with concrete measures of ensuring agricultural production is "all-weather" and has value for money. Only then will it lead to poverty alleviation and sustain prosperity for all.
- iv. Increased investor confidence will depend on prevailing security in the country. In addition, from past experience, investors normally have a 'wait and see attitude' as the Country goes into a campaign and election season, which is likely to happen towards the end of 2016.

b) ***Inflation***

- 52) The BPS 2016 states that the average annual inflation was 6.8 percent in January 2016 compared to 6.7% in January 2015 and therefore has been within the Government's target ( $5\% \pm 2.5$ ). The rate of inflation is expected to remain within the target in 2016 and the medium term.
- 53) The committee notes that in December 2015 and January 2016, the inflation rates surpassed the Government's target to stand at 8.01% and 7.78 % respectively. This implies that the rate of inflation would have been higher were it not for the counteractive effect of the low fuel prices that is being experienced globally. Food and non-alcoholic beverages category continues to be a major contributor to

inflation and there is need to regulate the incidental costs of food production, to make food more affordable especially in the urban areas.

*c) Interest rates*

54) According to the BPS, by January 2016, there was an ease in various interest rates. The interbank rate declined from 8.8% in November 2015 to 6.2% in January 2016; the treasury bills rates recorded high rates at 21% mark in October 2015 but incessantly declined to 11.4%, 13.7%, 14.3% for the 91-day, 182-day and the 364-day Treasury Bills.

55) The average lending rates increased to 17.4% in December 2015 compared to 16% December 2014, while the deposit rate increased to 7.9% from 6.8% over the same period. This is as a result of revision of the Kenya Banks Reference Rate (KBRR) from 8.5% in January 2015 to 9.87% in July 2015. The interest spread -difference between the average lending and deposit rates- rose to 9.5% in December 2015 compared to 9.2% in the previous year.

56) There was a depressed growth in the private sector credit, which stood at 18% in December 2015 compared with 22.2% growth in the same period in 2014.

57) The committee notes that the increase in the lending rates has a negative impact on the private sector growth especially if the commercial banks' customers expect a hike in these rates. On the other hand these rates are likely to decline as a result of the recent aggressive regulation of Commercial Banks by the Central Bank of Kenya which has, for example, published the lending rates of the various Commercial Banks. However, the lending rates may not change due to the oligopolistic nature of the banking sector in Kenya.

*d) Exchange Rate and Foreign exchange reserves*

58) In 2015, the exchange rate depreciated against major international currencies but it was able to remain resilient at the beginning of 2016. It stabilized against at Ksh 102.2 against the US Dollar compared to Ksh 102.8 in October 2015. It appreciated to stand at Ksh 145.2 and Ksh 110.8 to the Sterling Pound and the Euro respectively from Ksh 153.3 and Ksh 111.1 in December 2015.

59) Foreign exchange reserves declined from USD 7895 Million in December 2014 to USD 7534 Million in December 2015 representing a fall in months of import cover

from 5 months to 4.8 months respectively. BPS 2016 projects an increase of 5.4 months of import cover over the medium term.

- 60) Going forward, the following are the key fundamentals that are worth noting:
- i. The stabilizing of the exchange rate was on account of accumulation of more debt and this may not be sustainable in the future.
  - ii. The downside risks to the stability of the exchange rate include: - the strengthening of the US dollar that would make it costly to borrow in the international markets; a deteriorating trade balance as a result of poor performance of key export commodities such as tea, coffee and horticulture; insecurity that would inhibit the recovery of the tourism sector.
  - iii. An improved performance of the Kenya's exports and a full recovery of the tourism sector are likely to result in sustainable levels of foreign exchange reserves that will boost the country's confidence in tackling exchange rate shocks.

*e) Public Debt*

- 61) The medium public debt is projected to grow by 44.6% of GDP in 2016/17, 45.9% of GDP in 2017/18 and decrease to 45.4% of GDP in 2018/19. The main driver of public debt accumulation will be the primary deficit which is expected to grow by 6.8% of GDP in 2016/17 and decrease to 4.1% in the outer years. It's worth mentioning that public debt has been on a rising trend, increasing at an average annual rate of 18%. As a proportion of GDP, public debt has risen from 43.1% in 2010/11 to 49.9% in 2014/15.
- 62) The latest debt sustainability analysis (DSA) report for Kenya notes Kenya's debt is sustainable. The DSA compares debt burden indicators to indicative thresholds over 20 -year projection periods. However, the report cautions that sustainability could deteriorate if a significantly lower than anticipated growth materializes. In particular, this could be triggered by a repeated and more severe drought; a protracted slowdown in growth for major trading partners, in particular the Euro area; continued decline in commodity prices; reduced remittance and FDI inflows; and an increase in global food and fuel prices.

**The following are issues of concern:**

- i. Fiscal Risks associated with weather related risks, underperformance of revenue collection coupled with weak cash management systems at county level will lead to continued expansionary fiscal policy. This will increase financing needs of the government, which will drive up domestic debt serving costs.
- ii. Further depreciation of the shilling against the dollar which currently stands above the 100 mark, may increase the external debt service burden. This may be likely since the current reprieve from further depreciation of the shilling has been from accumulation of external debt and this is unsustainable since the debt will be paid in the near future.
- iii. Realization of contingent liabilities associated with explicit lending or implicit guarantees to state- owned enterprises and county governments would lead to increased debt stocks and servicing costs.

***f) Fiscal Policy Outlook***

- 63) According to BPS 2016, the Medium Term Fiscal Policy aims at supporting rapid and inclusive economic growth, ensuring sustainable debt position and at the same time supporting the devolved system of Government for effective delivery services. Moreover, the fiscal policy is geared to the attainment of EAC convergence criterion on the deficit inclusive of grants of 3.0% of GDP by 2020/21.
- 64) This shall be attained through increasing of revenue over the medium term from the estimated 20.6% of GDP in 2015/16 to 21.1% of GDP in 2018/19. On the other hand, the government targets to contain growth of expenditure over the medium term; the total expenditure is set to decline from 28.3% of GDP in 2016/17 to 26.0 % of GDP in 2018/19. This will ultimately reduce the overall deficit inclusive of grants from 6.8% of GDP in 2016/17 to 4.1% of GDP in 2018/19. The decline in the overall fiscal balance over the medium term will allow for total public debt to gradually decline from 44.6% of GDP in 2015/16 to about 45.4% of GDP in 2018/19.
- 65) The committee observes that there is a consistent lack of adherence to the fiscal framework as seen in the previous year's hinders the effectiveness of the fiscal policy being applied over the medium term. A comparison of the fiscal projections

in the Budget Policy Statements for the last three years indicates a systematic drop in revenue projections in subsequent years. For example, the BPS 2014 projected a revenue collection of 22.0% of GDP, the BPS 2015 revised this to 20.7% of GDP and the BPS 2016 has further revised it to 20.3% of GDP. The government expenditures projections also witness a systematic drop in subsequent years. On the other hand, the Fiscal Deficit is reviewed upwards with each subsequent BPS. The table below gives a comparison of government operation projections from BPS 2014, BPS 2015 and BPS 2016.

- 66) Further, the lack of maintaining a consistent fiscal framework will make it hard for the attainment of EAC convergence criterion on the deficit inclusive of grants of 3.0 percent of GDP by FY 2020/21.

## V. FY 2016/17 AND MEDIUM TERM FISCAL FRAMEWORK

### a) Revenue Projection

- 67) For the FY 2016/17, the government targets revenue collection amounting to Ksh. 1.5 trillion (20.6% of GDP) from Ksh 1.36 trillion (21.1% of GDP) in 2015/16. The ordinary revenue is projected to be Ksh 1.38 trillion (19% of GDP) in 2016/17 compared to Ksh 1.25 trillion (19.5% of GDP) in 2015/16. The Appropriations-in-Aid are projected at Ksh 116.2 billion (1.6% of GDP) compared to Ksh 103.2 billion (1.6% of GDP) in 2015/16.
- 68) Analysis of the revenue collection as a proportion of GDP indicates a contraction. The largest revenue heads, income tax and VAT are projected to contract in 2016/17. However, import duty and other revenue are set to remain unchanged while excise duty is expected to grow from 2.2% of GDP in 2015/16 to 2.5% of GDP in 2016/17. This indicates a projection of increased exportation.
- 69) A review of approved budgets against actual revenue performances in previous years indicates systematic overestimations of revenue. Already, the first half performance for 2015/16 shows that Revenue has underperformed by 11.52%<sup>1</sup>. The underperformance has a negative impact on expenditure performance. The revenue targets should be reviewed for a realistic projection to be given.
- 70) The total expenditure and net lending is projected at Ksh 2.05 trillion (28.3% of GDP) compared to Ksh 2 trillion (31% of GDP) in 2015/16. The contraction in expenditure as a proportion of GDP is witnessed in both recurrent and development expenditures. The total recurrent expenditure is projected at Ksh 1.19 trillion (15.1% of GDP) compared to Ksh 1.09 trillion (15.7% of GDP) in 2015/16 while total development and net lending is projected at Ksh 706.3 billion (11.1% of GDP) compared to Ksh billion (9.2% of GDP) in 2015/16.
- 71) Under the recurrent expenditure, the ministerial recurrent is set to reduce while the allocation for CFS expenditures is set to increase from 3.5% of GDP in 2015/16 to 3.8% of GDP in 2016/17. Under the development expenditure, both domestically finance and foreign financed development are projected to contract while the equalization fund is set to be maintained at 0.1% of GDP over the medium term.

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<sup>1</sup> Quarterly Economic and Budgetary Review for First Half of 2015/16

72) The contingencies funds are set to be maintained at 0.1% of GDP over the medium term while County Allocations are projected to reduce from 4.1% of GDP in 2015/16 to 3.9% of GDP in 2016/17. It is to reduce further to 3.7% of GDP in 2017/18 and 3.5% of GDP in 2018/19.

73) The committee observes that although there an attempt to contain growth of expenditures, there is no clear indication of whether there is a shift of resources from recurrent to development expenditures since both are set to reduce in 2016/17.

**b) *Deficit Financing***

74) Fiscal deficit including grants is set to reduce from Ksh 569.2 billion (8.8% of GDP) in 2015/16 to Ksh 495.5 billion (6.8% of GDP) in 2016/17. The reduction will be sustained gradually over the medium term to Ksh 372.7 billion (4.1% of GDP) in 2018/19. The deficit in 2016/17 will be funded by net external financing amounting to Ksh 310.7 billion (4.3% of GDP) and domestically amounting to Ksh 184.8 billion (2.5% of GDP).

75) The gradual decline in fiscal deficit over the medium term will see external financing reduce from 4.3% of GDP in 2016/17 to 2.5% of GDP in 2018/19. Likewise, domestic financing will reduce from 2.5% of GDP in 2016/17 to 1.6% of GDP in 2018/19.

76) The committee observes that the decline in fiscal deficit over the medium term shows an over-ambitious plan by the Government to achieve the EAC Fiscal rule that requires member countries to have their budget deficits below 3% of GDP by 2020/21. The achievement of this reduction in deficit against current expenditure pressures may be farfetched.

## VI. INTERGOVERNMENTAL FINANCING FRAMEWORK: DIVISION OF REVENUE

### *a) Devolution and Inter-fiscal Issues*

- 77) The Committee noted the massive impact the devolution is bringing to the lives of Kenyans. Despite transitional issues in the early months of devolution, financing of counties has fairly stabilized and the nascent benefits devolution can be seen on the economic and developmental front. The key achievements since then include, investment in health, county roads, and collection of own revenues (which has risen to at least Ksh. 33 billion by 2014/15). On financing, the first Annual Division of Revenue Act of 2013 allocated Ksh. 210 billion to counties: Ksh. 190 billion shared using the approved revenue sharing formula among counties, and Ksh. 20 billion to cater for level 5 health facilities and donor commitments. Using the revenue base of 2010/11, the Ksh. 210 billion exceeded the 15% threshold for allocations to county governments according to the Act. The National government received 730.4 billion out of the shareable revenue.
- 78) In 2014/15 budget cycle, the enactment of the Division of revenue Bill, 2014 saw the counties receiving an aggregated amount of Ksh. 226.7 billion out of the Ksh. 1, 026.3 billion shareable revenues. The national government was allocated Ksh. 799.65 billion out of which Ksh. 6.72 billion was specifically earmarked for financing of Economic Stimulus programmes, level 5 hospitals and allocation to the Equalization Fund.
- 79) Equitable amount to counties rose from 226.66 billion in 2014/15 to Ksh.259.775 billion in 2015/16 (14.6% growth). The National government share rose from Ksh. 799.65 billion to Ksh. 975.389 billion. Including conditional allocations the aggregate revenue allocation to county governments rose from Ksh. 226.66 billion in 2014/15 to Ksh. 287.044 billion in 2015/16 (including all the conditional allocations).
- 80) The Committee noted various lessons from the past three years of devolution, some relating to financing, expenditure and transfer of functions. One of the key observations is that the costing of functions was not done, instead, revenue allocations in 2013/14 corresponded to the unbundled functions between the national and county governments and consequent allocation of resources through the horizontal “formula”. Thus, inequities were bound to remain across counties, which were addressed through conditional allocations or in some years through additional equitable share resources.

- 81) The Committee notes that given that devolution has taken hold, including county level expenditure prioritization within the available resources, the issue of costing of functions is fundamentally overtaken by events. This simply means that counties can prioritize expenditure for functions in Schedule 4 of the constitution within available equitable revenue share and “own” revenue collections.
- 82) The devolution process, the Committee observes has not been easy especially with regard to intergovernmental transfer of functions and resources. Each division of revenue process has been marked with various challenges, but this is expected to dissipate as counties strengthen own revenue capacities, improved and stable framework for conditional allocations and application of Article 187 of the constitution.
- 83) Another major challenge noted by the Committee include the lag in the approval of audited revenues which often tend to affect the computation of county revenue share thresholds. For example, this year’s revenue sharing will be based on 2013/14 audited accounts even though the audited accounts for 2014/15 should have been dispensed with. Thus, the Committee recommends that the National Assembly expedite the approval of latest audited revenue accounts.
- 84) Further, from the submissions with the departmental Committees and interactions with county Governments, the Committee in particular observes several outstanding issues: one, inadequate transfer of resources for some devolved functions such as health and roads, several openly county functions in the health and infrastructure sectors; two, that efficient implementation of national government functions, for instance security and ICT, could hold a key in unlocking county economic potential.
- 85) In particular the Committee noted various issues raised by County of Governors (COG) on the BPS key among them:
- i. That the resources related to crop development and productivity; agribusiness and information management; irrigation and land reclamation, fisheries development; livestock resources management and development and cooperatives development and management be transferred to county governments.
  - ii. That money allocated under the Ministry of Health relating to county functions be transferred to county governments. In particular, the COG

recommends that the functions affected include user fees reimbursement for dispensaries and health centres; free maternity program; slum upgrade and cancer mitigation and control. The resources subject to transfer amount to Ksh. 22.5 billion.

- iii. The Council also observes that some functions in the Ministry of Sports Culture and Arts such as library services should be transferred to counties, including Ksh. 1.11 billion library services
  - iv. The COG also recommends the need to increase allocations from the Fuel Levy Fund to cater for county roads from the current 15% of the actual collections to about 31.7%.
- 86) The Committee observes that COG suggests the transfer of functions and requisite amounts of the said programmes from the National Government. However, the Committee notes that the true cost of the said functions are not necessarily equivalent to the amounts that the National Government has allocated to them. Thus the Committee notes that the idea is that counties should receive enhanced financing alongside own resources. In this regard, the Committee recommends that counties prioritize all devolved functions in their spending within available resources.
- 87) Overall the Committee sought to strike a balance between the realities of the concerns expressed by the Council of Governors and the existing need to balance austerity between the two levels of government as emphasized in the BPS.

#### *b) Division of Revenue between the National and County Governments*

- 88) The Committee noted that the Division of Revenue Bill, 2016 had already been tabled in the Parliament and the Senate will have its chance to make its contribution. All these issues shall inform this year's allocation of revenue raised by the National government through the enactment of the Division of Revenue Bill, 2016 and the County Allocation of Revenue Bill, 2016.
- 89) The Committee considered the two proposals on revenue allocation for 2016/17 are already in public domain, the CRAs recommendation on revenue allocation for 2016/17 and the revenue allocation recommendation in the BPS. CRA released its recommendation pursuant to Article 216(1)a in December 2015.



- 90) The CRA recommends that an Ksh. 377.518 billion, comprising of Ksh. 331.765 billion as equitable share and Ksh. 45.753 billion as conditional allocations, be transferred to counties. CRA grows baseline allocation of equitable share of revenue in the current financial year by a three-year revenue growth 15.09%. Additional amounts for county roads and public participation amounting to Ksh. 27.79 billion and Ksh. 5 billion are further added to the baseline. Thus, the proposed equitable share will amount to Ksh. 331.765 billion.
- 91) The Committee notes that CRA maintains the current conditional allocations (Level 5 hospitals, Free Maternal health Care, Compensation for user fees forgone, leasing of medical equipment and 15% of Road Fuel Levy Fund) but grows each of them by the 15.09%. In addition, five new categories of conditional transfers are included in the Commission's recommendation. These include, Ksh. 5.196 billion for salaries for devolved staff retained by county governments, Ksh. 4 billion to build county headquarters in Lamu, Tharaka Nithi, Nyandarua, Tana River and Isiolo. And Ksh. 5 billion for rehabilitation of Secondary and primary schools. In addition, CRA recommends that Ksh. 5.196 billion be transferred as conditional allocation to counties for county emergency funds and Ksh. 6.3 billion for rehabilitation of village polytechnics. Thus, a total amount of Ksh. 25.692 billion will be sent as new conditional allocations to county governments.
- 92) The Committee observed that the BPS proposes to allocate a gross amount of Ksh. 302.198 billion to counties, comprising of Ksh. 280.3 billion as equitable share and Ksh. 21.897 billion as conditional allocations. The equitable share is computed by growing the baseline amount (Ksh. 259.775 billion) by an revenue growth of 7.9% on account of weak revenue performance.
- 93) The BPS maintains the current conditional allocations but keeps three of them Level 5 hospitals, compensation of user fees forgone, and leasing of medical equipment at the same level as in the current Division of Revenue Act. The amount for maternal health is marginally reduced from Ksh. 4.298 billion to Ksh. 4.121 billion, while the conditional allocation out of the Fuel Levy Fund rises by Ksh. 1 billion from Ksh. 3.3 billion to Ksh. 4.307 billion. The proposed amounts for loans and grants declines from Ksh. 10.671 billion to Ksh. 3.87 billion. The draft BPS further introduces a new conditional allocation of Ksh. 200 million known as special purpose medical emergency for two counties namely Lamu and Tana River.
- 94) The Committee notes that comparatively, CRA total allocations will rise by 31.5% whereas the BPS allocations will rise by a mere 5.27%. The difference between CRAs recommendation for equitable share and that of the BPS is Ksh. 46.403

billion. Equally, CRA proposes approximately double the amount of conditional allocations that the draft BPS is proposing. Despite this difference, the Committee had issues on both proposals for allocation to counties. Briefly, on account of the BPS, DORB, and COG comments and sectoral committee recommendations, revenue allocations this year the Committee observes the following:

- i. That conditional allocations as per Article 202 need to be kept at a minimum, hence the new conditional allocations proposed (by CRA) will complicate the revenue sharing framework in view of Article 187 on transfer of functions between levels of government. In particular, conditional allocations should only address critical issues which would not be funded in any other way. Thus, the justifiable conditional allocations should be Level 5 hospitals, Free Maternal health Care, Compensation for user fees forgone, leasing of medical equipment and 15% of Road Fuel Levy Fund. New conditional allocations that the Committee urges consideration is provision for security in counties where the county governments are making certain contributions.
- ii. Allocations for county roads and transfer of functions. The Committee notes that some county roads functions are still held by the National Government through the KURA and KERRA. The Committee therefore proposes the estimated Ksh. 27.79 billion for roads be included in the equitable share as recommended by the CRA.
- iii. The Committee notes that the BPS uses a very conservative revenue growth rate in the computation of the equitable revenue share. Actual revenue realization seems to differ from the growths used in BPS. Average actual revenue performance for the last four years is about 13-14%, thus the rate of growth of revenue that should be used at the minimum to compute the equitable share for 2016/17 should be 13%.
- iv. The Committee takes note of the macroeconomic and fiscal environment of the Kenyan economy today. In particular, the Committee is concerned by rising debt burden in the face of weak revenue performance. Therefore, the National government should prioritize its expenditure in the face of county allocations to avoid revenue shortfalls, fiscal deficits, borrowing and in-year budget cuts. In addition, both levels of government should enhance fiscal prudence and austerity whenever necessary to enhance efficiency and productivity of public spending. Annual incrementalism in budgets at either level of government is discouraged.

- v. The BPS maintains the current conditional allocations but keeps three of them Level 5 hospitals, compensation of user fees forgone, and leasing of medical equipment at the same level as in the current Division of Revenue Act. Indeed, the BPS reduces the amount for maternal health from Ksh. 4.298 billion to Ksh. 4.121 billion. The Committee proposes that the amounts for these conditional allocations be increased on the basis of the revenue growth.
  
- vi. The Committee critically reviewed the issues raised by COG on the 2016 BPS. In this regard the Committee recommends that any withheld functions by the National Government be immediately transferred to counties. This should be accompanied with enhanced equitable share allocations and conditional allocations as necessary. The Committee further notes that nothing stops counties from prioritizing expenditure allocations to all county functions identified by the COG and as outlined in Schedule 4 of the Constitution within allocated equitable share and own resources.

## VII. FISCAL FRAMEWORK AND IMPLICATIONS TO COUNTIES

95) **Mr. Speaker Sir**, the Committee received reports and recommendations from various Standing Committees of The Senate on the BPS. Once again, the Committee decries the limited time within which the Committees were tasked to consider and give recommendations on the BPS. Consequently, time constraints inhibited detailed scrutiny of past performance and future policy proposals of various government-spending agencies.

96) **Mr. Speaker Sir**, even as my Committee undertakes to engage the National Treasury in order to have future BPSs submitted early, I urge the Standing Committees to continually interrogate government policies, programmes, and resource utilization of ministries and agencies with direct implications on the performance of counties. Through regular interactions with ministries and agencies under their jurisdiction the Committees will of The Senate will be better equipped for the onerous task of reviewing budget documents.

97) **Mr. Speaker Sir**, the following are the sectoral issues and recommendations made by various Committees.

### 98) Social Sector

#### Introduction

The Second Schedule of the Senate's Standing Orders assigns the Standing Committee on Labour and Social Welfare the mandate to consider matters related to manpower and human resource planning, gender, culture and social welfare, youth, National Youth Service, Children's welfare, national Heritage, betting, lotteries, sports, public entertainment, public amenities and recreation. Specifically, the national spending agencies under the purview of the Committee are:

- (a) Ministry of Labour Social Security and Services with all agencies under its control;
- (b) Ministry of Sports, Culture and Arts with all agencies under its control;
- (c) State Department for Planning- National Youth Service-Gender and Youth Empowerment Programme;
- (d) State Department for Coordination of National Government- Betting Control, Licensing and Regulation Services; and
- (e) National Gender and Equality Commission.

### Medium Term Budgetary Allocations

The total budget ceilings proposed for the programmes under the purview of the Committee in the BPS for FY 2016-17 amounts to Kshs. 52.44 billion of which Kshs. 20.61 billion (39%) is for recurrent expenditure while Kshs.31.83 billion (61%) is for development expenditure.

### Observations and Recommendations

- i. The Committee observes that the Fourth Schedule Part 2 Paragraph 4 of the Constitution does not clearly state the national and county functions with respect to cultural activities, public entertainment and public amenities including museums, sports facilities and libraries. *It is therefore recommended that a legal framework that clearly articulates what constitutes a county function and national function be put in place to avoid duplication, particularly under the Ministry of Sports, Culture and the Arts.*
- ii. The Committee notes that the roll-out of the cash transfer programmes by counties may be a duplication of efforts and prone to abuse since the two levels of government – national and county – do not have a single register. *It is therefore recommended that a single register should be established for the cash transfer programmes to avoid abuse by beneficiaries.*
- iii. The Committee observes that there are persistent delays in the release of funds by the National Treasury. As at 31<sup>st</sup> December 2015, Kshs 99 billion had been disbursed to the County Governments out of Kshs 287.044 billion that is supposed to go the County Governments for FY 2015/16. *It is therefore recommended that the National Treasury should strictly adhere to the disbursement schedule and give priority to county disbursements.*
- iv. It is observed that the BPS in its current format lacks up to date data in respect to the extent of achievement of planned activities as approved in FY 2014-15 hence creating difficulty in determining justification for the allocations. For example, the status of the construction of the model employment offices and the completion of three regional stadia was not provided. This information, even if it were preliminary, say for the first quarter and or first half of the current financial year, would provide pointers as regard to budget implementation challenges for the current budget. It is further observed that the Budget Policy Statement does not indicate programme outputs/ outcomes hence it is difficult to interrogate and provide specific recommendations.

## 99) Health

### Introduction

The health agenda is focused on the implementation of Kenya Health Policy (2014-2030) and Kenya Health Sector Strategic and Investment Plan (2014-2018), which are part of the policy instruments for the realization of Kenya's health Vision 2030 and Medium Term Plan II 2013-2017. The health sector plans to implement five programmes namely:

- i. Preventive, Promotive and RMNCAH Services;
- ii. National Referral and Specialized health Services;
- iii. Health Research and Development;
- iv. General Administration and Support Services;
- v. Health Policy, Standards and Regulations

### Medium Term Budgetary Allocations

The Budget Policy Statement provide for an amount of Ksh.59.5 billion of which Kshs. 28.9 billion is recurrent and Kshs. 30.6 billion is development for the health sector. The sector will also benefit from conditional grants to county government for free marternal health care at Kshs 900 million, Leasing of medical equipments at Ksh 4,500 million, compensation for user fee Kshs 900 million, special purpose grants of Kshs 200 million for supporting access to emergency medical services.

### Observations and Recommendations

The Committee had engagements with council of governors concerning the implementation of programmes in the health sector and recommends the following;

- i. County budget process should be carried out alongside the National budget process so that the Senate can interrogate both levels of government budgets exhaustively. *It is therefore recommended that the Finance Committee introduces an amendment to the PFM Act, to give Parliament a longer period to engage with the Budget Policy Statement.*

- ii. That Minimum allocation of funds to be allocated to the ministry headquarters for policy purposes and for monitoring and evaluation while the rest of the resources are allocated to referral hospitals and to county governments.
- iii. That the Preventive, Promotive, and RMNCAH (RMNCAH refers to reproductive, maternal, neonatal, child and adolescent Health) Programme should be refocused to avoid overlap of functions such as promoting primary healthcare and environmental health care under the mandate of the county governments.
- iv. That funds for county government should be released on time because of the critical aspect of some functions in health sector like maternity services.
- v. That implementation of the Managed Equipment Services projects should be hastened and achievable targets set.

## **100) Energy**

### **Introduction**

With regards to energy and petroleum, the proposed ceiling measures across the five programmes is based on the thematic policy area focusing on investing on overall infrastructure key among them energy with a view to enhance generation, transmission and connectivity to inform the main of broad based and sustainable economic growth as well as job creation and county and national competitiveness.

### **Medium Term Budgetary Allocations**

The proposed overall ceiling allocation towards energy and petroleum programmes stands at kshs 91.08 billion, a reduction of approximately 4 percent from the current allocation in 2015/16. The shortfall is likely to affect the key programmes of Power Generation, Transmission and Distribution while allocations to the other programmes are much in line with the resource requirements. Moreover, the resource framework takes into cognizance the key agenda of the Ministry's +5000 MW Plan launched in September 2013 to enhance total effective capacity from approximately 1,664 MW (2013) to over 5000 MW by 2017.

## Observations and Recommendations

The Committee recommends the following:

- i.* That national projects such as electricity access and connectivity are critical interventions to spur the competitiveness and performance of national and county economies. In addition, it creates conducive business environment and attracts private sector investment at the Counties. The Committee therefore recommends the proposed ceilings measures under all the programmes be maintained.
- ii.* That there is need to enhance oversight measures on energy projects with a view to fast-track flagship projects currently under implementation so as to be completed without further delay.
- iii.* Regarding the Energy Bill which outlines the legal regime that will spur the energy policy and implementation of sector mandates, the Committee is cognizant that the bill is being discussed at the National Assembly. The bill is expected to provide clarity with respect to functions between the two levels of government including mandate given to the National Government of policy making and that of implementation assigned to counties will be discussed further once the Bill is brought to the Senate. The imperative therefore is to facilitate the Senate and key stakeholders input in which the Committee will play a leading role.
- iv.* That there is need for the Ministry of Energy and Petroleum to apprise the Committee on the status of oil exploration including mapping and licensing of additional blocks and development of auxiliary infrastructure to support the industry.
- v.* That uptake of renewable energy such as biogas and alternative sources of energy such as solar and wind among the majority of Kenyans is important. The Ministry's outreach programme to propagate and disseminate available renewable energy technologies is done through Energy Centres that currently number 16 centres. There is need to extend this outreach with a view to cover all the counties.
- vi.* Considering that street lighting is a critical component to security of county residents while boosting a 24 hour economy, the Committee recommends that counties should be supported to undertake this critical exercise by way of a conditional grant.

- vii. That there is urgent need to examine the pending bills in the energy sector with a view to settling them since delays may affect allocations to programmed activities and future power outputs and delay the delivery of cheap power.
- viii. That in view of the limited timelines in processing the annual BPS, the Committee recommends an amendment to the PFM Act, 2012 on the relevant Sections to extend the given timelines to one month.

## **101) Agriculture, Rural and Urban Development sector**

### **Introduction**

The Committee received submissions from the standing committee on Agriculture, Livestock and Fisheries Agriculture that is composed of state departments of Agriculture, Livestock and Fisheries is mandated to provide policy direction and to ensure sustainable development for agriculture, livestock and fisheries for food security and economic development.

### **Medium Term Budgetary Allocations**

The overall budget proposed for the state departments of Agriculture, Livestock and Fisheries in the BPS for FY 2016/17 amounts to Ksh 34.8 billion. The state department of agriculture is allocated a total of Kshs 23,326 million of which Kshs 7,199 million for recurrent and 16,127 million for development, state department of livestock has been allocated Kshs 6,836 million of which Kshs 1,968 million for recurrent and Kshs 4,868 million for development while the state department of Fisheries has been allocated a total of Kshs 4,695 million of which Kshs 1,576 million is for recurrent while Kshs 3,119 million is for development.

The state departments of agriculture, livestock and fisheries have planned to implement five programmes namely; General administration planning and support services; Crop Development and Management; Agribusiness and information management; Livestock resource management and development; Fisheries development and management and Irrigation and land reclamation programme which the state department of water and irrigation will implement.

## Observations and Recommendations

The Committee made the following recommendations on the BPS.

- i.* Agriculture is a fully devolved function and with functions going to counties, administrative cost at National Government should decrease because schedule 4 of the constitution clearly indicates that National Government's role in Agriculture to be policy and Research
- ii.* Agri Business and information management has been reduced from 3.5 billion to 1.7 billion. Agri Business and Information management vote should be increased as agriculture is a critical pillar to realization of vision 2030. Agribusiness is the collective business activities that are performed from farm to fork. It covers the supply of agricultural inputs, the production and transformation of agricultural products and their distribution to final consumers. Agribusiness is one of the main generators of employment and income worldwide
- iii.* The State Department of Livestock's programme of livestock resource management and development will have its vote reduced from 7.1 billion to 6.8 billion. 80% of Kenya is Arid and Semi Arid Lands (ASAL) and 60% of livestock is found there supporting over 10 million people as the only source of livelihood. The Committee is of the opinion that additional funds should be added to this vote. This will assist with functions such as increased value addition, establishment of Livestock Disease Free Zones (DFZ), Fast-track Modernization of the Kenya Meat Commission to increase output and efficiency and enable the country to meet demand of an expanding export market.
- iv.* The State Department of Fisheries had its vote increased from Ksh 4.5 billion to Ksh 4.6 billion. The Committee is of the opinion that more funds need to be allocated to this vote. Kenya Marine Fisheries Research Institute has over 500 vacancies due to lack of funding. Recruitment of young researchers in the industry is non-existent, which could lead to a crisis when current researchers reach the age of retirement. There is a need for continued research and investment of Aqua Culture and Marine Fishing. Kenya currently does not take advantage of the Coastline when it comes to fishing 92% of the fish consumed in Kenya comes from Lake Victoria. Promotion and Protection of Marine and Fisheries resources are another reason why additional funds are required in this vote. Kenya cannot protect its marine resources due to lack of adequate machinery and resources. There should be Intensive fish production technologies systems development, Breeds and strains development, Gene bank development,

Monitoring control and Surveillance (MSC) development, Restoration of degraded fisheries stocks and habitats, .National audit inspection conclusion, Fish quality control laboratories establishment, Increased adoption of value additions technologies, Stock assessments for commercial fish species, Experimental use of fishing gears, Fishing and breeding areas mapping. The Committee is also of the opinion that there is a missing link in fisheries especially when it comes to marketing. There should be a budget line item supporting the fish market and a fund established to create a Fish Marketing Authority to look into the frustration facing the Fish Farmer.

- v. Irrigation was allocated Ksh 13.8 billion down from 16.8 billion last financial year. While the Galana/ kulalu ranch irrigation also remains a priority for the government, the Committee's recommendation that rather than centrally focus on the Galana Kulalu irrigation project, the funds should be distributed equally to all counties to initiate their own irrigation projects, as conditional grants. Each County should have a major irrigation project rather than one central irrigation project like Galana Kulalu irrigation project.
- vi. The Committee is concerned about Pending Bills: The State departments of Agriculture, livestock and fisheries had pending Bills amounting to KSh 161 million recurrent and KSh 411 million developments in the FY 2012/13. This figure has risen to KSh. 216.8 million for recurrent and KSh. 4,695.4 million for Development by 2014/15. This is quite substantial amount given that Pending bills at the closure of each financial year form the first charge at the beginning of the following financial year. The Committee is therefore concerned that money earmarked for 2016/17 will be used to pay for services received in 2014/15.

## 102) Governance, Justice Law and Order Sector

### Introduction

The Committee received submissions from the Committee on Legal Affairs and Human Rights and observed that the sector is largely concerned with dispensation of justice and legal system. The Sector plays a fundamental role in creating an enabling environment for economic, social and political development of the country. It is responsible for: providing legal advice to Government, promoting integrity and the fight against corruption, providing prosecution services, spearheading the implementation of the Constitution, regulating political parties, protecting witnesses and protecting human rights, delimitation of electoral boundaries and management of electoral process. The

matters falling under the subsector include the organization and administration of law and justice, elections, promotion of principles of leadership, ethics and integrity; and implementation of the provisions of the Constitution on human rights.

### **Medium Term Budgetary Allocations**

In Financial year 2016/17, the total budget estimates for various programmes and sub-programmes under the Legal sector ceilings according to the Budget Policy Statement, 2016 is projected at Kshs. 48.3 billion. Compared to financial year 2015/2016 estimates which stood at Kshs 33.055 billion, there is an increase in proposed allocations to this sector. However, according to the MTEF sector report, the total resource requirements by the various programmes is estimated at Kshs 71.461 billion. In the medium term, the total ceiling for the various programmes and sub-programmes is projected to rise marginally to Kshs 48.6 billion in 2017/2018 before plunging to Kshs. 37.2 billion in 2018/2019.

### **Observations and Recommendations**

The following are recommendations on the BPS 2016 from the Legal and Human Rights Committee

#### **Judiciary**

- i.* Construction and Establishment of Courts: Whereas Courts are fundamental for dispensation of Justice, the criteria for their establishment and completion should be sequential and in a phased manner to avert stalling and incomplete projects. Therefore Judiciary should prioritize completion of courts under construction before starting new projects.
- ii.* Leveraging use of technology based strategies in reduction of the backlog cases.
- iii.* Recommends eestablishment of new courts in areas where none exist be prioritized over the expansion of existing courts.
- iv.* The Committee recommends increase and establishment of more mobile courts for both High Courts and Magistrates Court from current proposal of just 3 mobile High Courts and 10 mobile Magistrates Courts in the 2016/17 financial year.
- v.* Timely release of the Exchequer issue particularly on development expenditure in order to upscale development absorption capacities.

### **Office of the Attorney General and Department of Justice**

- vi.* The Committee recommends provision of adequate resources for the Office of the AG to conclude Backlog of 1100 Cases against the Government during the financial year 2016/17.
- vii.* It is noted that the office of the AG intends to establish 5 county offices and 2 for the public trustee in the counties. This is still too low considering the critical legal services offered by offices falling within the office of the Attorney General and the requirement for decentralization of state offices under the Constitution.
- viii.* The Committee recommends fast tracking and completion of the National Policy on Public Participation during the Financial year 2016/17 to avert any legal tussles.

### **Ethics and Anti-Corruption Commission**

- ix.* The Committee observes that there has been very low output from the EACC and therefore proposes a reduction in the resource ceilings for the FY 2016/17 which may be reallocated to other agencies within the sector such as the Office of the Director of Public Prosecutions.

### **Office of the Director of Public Prosecutions**

- x.* In the year 2016/17, the Office plans to establish the 15 prosecution offices in Counties to support its prosecution services. The Committee proposes that this be enhanced as it is anticipated that the prosecutions will increase under the county laws.

### **Registrar of Political Parties**

- xi.* The Committee recommends that the minimum allocation to the Registrar of Political Parties in 2016/2017 financial year should not be less than Ksh 4.04 billion in light of the requirements of section 24 of the Political Parties Act, 2011, which provides that the resources to be allocated towards the Political Parties Fund shall not be less than zero point three per cent (0.3%) of the revenue collected by the national government.

### **Independent Electoral and Boundaries Commission**

- xii.* Voter Registration: There is need to consider allocating most of the resources which are projected for the FY 2017/2018 to the FY 2016/2017 to enable the commission to prepare for 2017 General Elections in time. This is also essential

in ensuring that IEBC meets the target of 8 million new voters as well as any planned procurement of electronic equipment before next General election.

- xiii.* High Level of Pending Bills by IEBC: - pending bills remains a major concern as they may reduce the resources available to Commission. The Committee therefore recommends comprehensive Audit of the Pending Bills and providing guidelines and capping on legal fees chargeable to public institutions to take into account any pending bills.
- xiv.* The Committee recommends completing geo-coding of 12,048 polling stations as proposed in 2015/2016 and 2016/2017 financial years.

### **Judicial Service Commission**

- xv.* It is noted that the resource allocation for 2016/17 (which is at 450 million) is a reduction from 473 million in the 2015/16 FY. It is proposed that this be enhanced to enable the Commission to achieve its target to: recruit 30 Judges; recruit 500 staff; and to enhance transparency, independence and accountability of justice by 70%.

### **103) Public Administration and international relations sector**

The Committee received submissions from the Standing Committee on National Security and Foreign Relations on the BPS and observed the following;

#### **Introduction**

Pursuant to the second schedule of the Standing Orders for the Senate, Standing Order 208(3) and Standing Order 235 (1), the Standing Committee on National Security and Foreign Relations is mandated to:

- a) consider all matters relating to regional integration, national security and foreign relations, international relations, agreements, treaties and convention;
- b) scrutinise the budget related policies, programmes and their objectives and the effectiveness of their implementation; and
- c) receive reports or consult with committees or members of the East African Legislative Assembly or the Pan-African Parliament on any matter relating to the work of the East African Legislative Assembly or the Pan African Parliament respectively.

It is from this perspective that the Committee is now mandated to scrutinise the BPS and estimates under the Ministry of Foreign Affairs and International Trade, Ministry of Interior and Coordination of National Government, Ministry of Defence and the State Department of East African Affairs.

### **Medium Term Budgetary Allocations**

The Budgetary allocation for the national security sector is projected to rise from Kshs 112,513 billion in 2015/2016 to Kshs 120,840 billion in 2016/2017, Kshs 123,217 billion in 2017/2018 and Kshs 141,993 billion in 2018/2019. The proposed budgetary allocation in 2016/2017 for the national security represents 2 percent of the GDP and 6.8 percent of the budgetary allocation.

The total budget estimates for various programmes and sub-programmes under the purview of the Committee in 2015/2016 financial year is **Kshs 135.697 billion**.

### **Observations and Recommendations**

- i. The Committee notes that resources for carrying out security activities are highly centralised, often times resulting in security agencies failing to immediately respond to security challenges because of lack of resources. *It is therefore recommended that the BPS should address this matter through practical policy interventions.*
- ii. The Committee notes that the BPS 2014 and 2015 promised the leasing of 2700 and 1200 police vehicles respectively. Similarly, the BPS 2015 promised to construct 15,000 houses for the police. In 2014/2015 the Government managed only 340 vehicles from the promised 2700 and 700 houses in 2013/2014. *It is therefore recommended that the House resolutions on the BPS 2015, that the leasing of motor vehicles by the police and the housing project be domiciled under the National Police Service Commission, should be fastracked to bring efficiency in the police service.*
- iii. The Committee observes that although it is reported that the Government has managed to insure all the police officers for medical cover, the cover had not been implemented as at December 2015. *It is therefore recommended that the Government moves with speed and implements the proposed medical cover in the second half of financial year 2015/2016.*
- iv. The Committees notes that the gap between resource requirements for some MDAs under the Committee's purview and the ceilings set out in the BPS is too high. Case in point is the Ministry of Foreign Affairs whose ceiling stands at 58 per cent

of its total resource requirements. *In order for the Ministry to deliver on its mandate with the reduced resource allocation, it is recommended that it should reprioritise the location of foreign missions in strategic countries in line Kenya's economic, international and diplomatic objectives.*

- v. The Committees notes that report that some counties such as Mandera and Wajir are funding security activities despite this being the responsibility of the national government. *It is recommended that a compensation mechanism be developed for counties that are vulnerable to insecurity.*
- vi. The Committee observes that correctional services falling under State Department of Coordination of National Government (now State Department of Correctional Services), face funding challenges due to a rise in the number of inmates. *It is therefore recommended that a policy should be developed to have petty offenders be subjected to communal service to decongest prisons.*

#### 104) State department of Education

##### **Introduction and Medium Term Budgetary Allocations**

The Committee received submissions from the Standing Committee on Education and noted that the department of Education has been allocated Kshs 81.39 billion out of which Kshs 59.4 billion for recurrent and Kshs 21.9 billion for development. The state department is implementing four programmes namely; primary education, secondary education, quality assurance and standards and general administration, planning and support services.

The expenditure ceiling for the TSC in 2016/17 is Kshs 186.6 Billion of which Kshs 186.5 billion is for recurrent while Kshs 0.10 billion is for development, representing an increase of Kshs 5.2 Billion (2.8 %) from the approved expenditure estimates for 2015/16 which is Kshs 181.4 Billion. The commission will be implementing four programmes namely teachers resource management, governance and standard and general administration, planning and support services.

##### **Observations and Recommendations**

The committee made the following recommendations:

- i. Resources to be provided to the Ministry of Education, Science and Technology to enable it set up at least one TVET in the counties that do not have one through conditional grants in order for them to establish TVETs.

This will ensure equity in the provision of TVET education, which is very critical towards the realization of vision 2030.

- ii.* The construction, equipping and rehabilitation of vocational training centres be done by the county governments since this was a devolved function. The funds allocated to these functions by the National Government should be re-allocated to County Equitable share.
- iii.* To realize the Sustainable Development Goal (SDG's) of ensuring inclusive and equitable quality of education and promoting lifelong opportunities for learners, TSC's budgetary allocation be enhanced to enable it employ at least 25,000 teachers in 2016/2017.
- iv.* The Provision of enhanced budgetary allocation to TSC for the payment of retirement benefits to teachers. The committee further made an observation that In the BPS 2016, no funds has been allocated to TSC for this.
- v.* That no allocation of funds has been made in the BPS 2016 for the recruitment of new teachers by TSC while the current teacher short fall stands above 100,000.
- vi.* To respond effectively to education needs and investing in ASAL's to enable learners in this area access quality education, more funds be allocated to the National Commission for Nomadic Education in Kenya.
- vii.* The Ministry of Education, Science and Technology to review policies and guidelines for Early Childhood Education for uniform standards across all counties and funds be allocated to this effect.

## **105) Information, Communication and Technology**

### **Introduction and Medium Term Budgetary Allocations**

The Committee received submissions from the Senate Standing Committee on Information, Communication and Technology and notes significant lopsidedness of resource allocations to this critical ICT sub-sector.

The Senate Committee on Communication and Technology mandate covers the entire ICT sub - sector with a view to ensuring services are delivered in line with key outputs and outcome indicators. The Committee avers the sector as a source of growth in expanding the economy where the contribution stood at 8.4 percent to GDP in 2014, compared to a share of 10.1 percent in 2011.

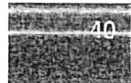
The committee notes the proposed ceiling measure as contained in policy document is being channeled through the four (4) programmes under implementation. The gross ceiling for the ministry of ICT is at Kshs 11.218 billion, indicating continuous investment in the ICT sub sector albeit marginal reduction of 6 percent when compared to current approved levels of FY 2015/16. Through the main programmes of ICT Infrastructure Development, Mass Media Skills Development, and Information and Communication Services the key projects and priorities currently under implementation, which are also critical to county performance in terms of enhanced service delivery and attracting investors are: the National Fibre optic cable (Phase II), communication infrastructure and county connectivity projects, Konza technopolis and government shared services. Other interventions include the digital literacy and migration (compliance and further roll out), the Presidential Digital Talent initiative for the youth, research laboratories, among others.

However, the committee observes that while funding levels have been consistent over the years with stable Development Partner support, a number of the flagship projects are behind schedule and there is need to fast-track completion. In addition, pending bills and outstanding commitment especially weighing down the State corporation KBC pose potential risks if not addressed accordingly and quickly, a practice the committee cautions is a serious fiscal pitfall in the near future if programme and project implementation as well as overall management of agencies is not anchored on sound planning and budgeting.

### **Observations and Recommendations**

The committee made the following recommendations:

- i.* That the overall ceiling measure of Kshs 11.218 billion be affirmed, with a further recommendation that the total allocation to ICT budget under the ministry's vote to be at least 5 percent of national budget ministerial expenditure in the medium term;
- ii.* that the ministry prioritizes the allocations (especially under ICT Infrastructure Development programme) towards fast tracking development of horizontal and basic infrastructure in Konza City; completion of County Connectivity Projects in the shortest time possible and enhancing the implementation of the second phase of National Optic Fiber Backbone Infrastructure with a clear policy on the last mile connectivity; and, the ministry liaising with KPLC to exploit the KPLC fibre to improve and supplement connectivity, among others.
- iii.* That it is time critical for the Universal Access Fund initiatives including the undertaking of the second access gap study be rolled out immediately with main aim of ensuring Kenyans in remote and unserved areas get access to mobile and



internet connectivity and other ICT infrastructure activities as envisioned in the fund objectives.

## 106) Land and Natural Resources Sector

### Introduction

The sector is concerned with matters relating to Environment Protection, Water and Natural Resources. The sector plays an important role in contribution to sustained economic transformation, and a competitive economy. In cognizance of this role, the government emphasizes protection and conservation of the environment, underpinned by effective climate change mitigation to sustain access to clean water, clean environment and a healthy productive population. Broadly the land sector fits into the overall objective of the reforms under agricultural transformation and food security. The policies pursued by the MDAs under the sector are majorly aimed at land sector reforms. According to the Economic Survey of 2013, about 42% of the Country's GDP is derived from natural resource-based sectors yet the ceilings provided for in these sectors are a paltry 5% of proposed allocations;

### Medium Term Budgetary Allocations

In order to implement the prioritized Programmes, the sector's proposed allocation is estimated at Kshs 74.55 billion 2016/2017. Out of the total proposed allocation for the FY 2016/2017, Kshs 19.53 billion is for recurrent expenditure while Kshs 55.02 billion is for development expenditure. The allocations are projected to increase to Kshs. 83.9 billion and Kshs. 84.3 billion in 2017/2018 and 2018/2019 respectively.

### Observations and Recommendations

The committee made the following recommendations:

- i.* That the Ministry of Mining budgetary allocation is extremely low compared to the envisaged mandates which is likely to adversely affect implementation and achievement of most of the flagship projects under the second medium term plan.
- ii.* The Transfer of functions related to Regional Development Authorities (RDAs), water conservation and forestry to the county government is incomplete.
- iii.* There are numerous policies and legislation in the sector, which have not been aligned to the Constitution 2010 as per the targets in the medium term plan II, thus hindering delivery of services in the sector.

- iv. Whereas the sector reports envisage critical reforms in the land sub-sector, the policy document only outlines indicative proposals along key programs under the land sub-sector. The document is not quite clear on how these interventions are expected to contribute to the thematic areas outlined.
- v. The policy document is short on land reform issues currently under implementation and are expected to continue to the medium term. They include key reform issues like digitization of land records and registries which can impact on ease of doing business efficiently and agricultural productivity.
- vi. Seek legal interpretation of policy guidelines from the Supreme Court ruling on functions of Ministry of Land, Housing and Urban Development (MOLHUD) and the National Land Commission (NLC) to avoid double allocation and duplication of functions;
- vii. Reallocate Ksh. 3.778 billion for the program on Integrated Regional Development under the State Department for Environment, Natural Resources and Regional Development to the respective counties;
- viii. Expedite the merging of the Kenya Water Towers Agency, Kenya Forest Service and the Kenya Wildlife Service into one state corporation in order to improve operational efficiency;
- ix. Make adequate budgetary provisions for geophysical survey under the Ministry of Mining. In addition, give a revised policy guideline on Ministry of Mining; if it is to be sustained, then must be allocated.

## **107) Roads and public Works**

### **Introduction and Medium Term Budgetary Allocations**

The Ministry of Transport and Infrastructure is proposed to have a total resource allocation of Kshs 265.298billion for the FY 2016/17. Out of this allocation, the State Department of infrastructure is Kshs 134.545 billion while Transport is Kshs 130,753billion.

The Directorate of Housing and Urban Development is Kshs 20.242billion out of which Kshs 111.165billion was allocated to the “urban and metropolitan development program”. This programme attempts to undertake devolved functions such as installation of streetlights, construction of bus parks and produce markets etc.

### **Observations and Recommendations**

The committee made the following recommendations:

#### **i. Allocations to National Government roads**

Forty one thousand three hundred and thirty nine kilometres (41,339kms) of roads have been transferred to counties yet there is no single allocation of resources for the additional roads.

The Kshs 27.79 billion currently allocated to roads in the national government budget should be transferred to counties, as equitable share, for construction and maintenance of county roads.

**ii. Fuel levy Fund**

The county governments have been allocated Kshs 4 Billion from the fuel levy fund for road construction while a further 22% that has been allocated to KURA and KERRA.

The 22% allocation to KURA and KeRRA should be reallocated to the county governments making it 37%, since the mandate of these road agencies have been transferred to the counties.

**iii. Allocations for the urban and metropolitan development program**

The functions undertaken under the 'urban and metropolitan development program' are devolved functions.

Consequently the allocation of Kshs. 11.165 billion for the directorate of housing and urban development should be an allocation to the county governments.

**iv. Allocations for LAPSSSET project**

The 3 berths at Lamu Port were expected to be at 10% completion in the Financial Year 2014/15 and 30% in 2015/16, yet no funds had been set aside for this purpose. Similarly, no funds have been set aside for the construction of resort cities in Turkana and Isiolo.

Allocations should be done for construction of the three berths and resort cities in Turkana and Isiolo.

**v. Allocation of funds for air strips**

There was no criteria stated, in the Budget Policy Statement 2016, for the allocation of funds for certain airstrips i.e. Nanyuki, Ikanga, Lodwar, Embu and Malindi .

**vi. Standard Gauge Railway**

The Budget Policy Statement should state exactly when the second (2<sup>nd</sup>) phase (Nairobi-Naivasha) of construction of the Standard Gauge Railway will begin.

## VIII. RECOMMENDATIONS

108) **Mr. Speaker Sir**, The Committee received useful submissions from all the Standing Committees of the Senate. The committees made significant observations on the BPS policy proposals for the 2016/17 and the medium term, identifying broad policy issues with great impact on counties, the issue of county functions held by the National Government and proposals on revenue allocation. From the perspective of Senate Committees and the role of Senate in protecting the interest of counties, the broad issues in this years BPS can be categorized as follows:

- (i) National policies and programmes that have a direct impact on economic performance of counties;
- (ii) Outstanding transfer of county functions alongside additional financing; and,
- (iii) Proposals on division of revenue between the two levels of government and among counties for the 2016/17 financial year.

109) **Consequently, Mr. Speaker Sir**, the Committee recommends as follows;

### **D. Enabling National Policies and Programmes**

In order to enhance the economic performance of county and national governments the Committee recommends as follows:

- i. Synchronization of social safety net funds at the national and county level through establishment of a common single register and a review of the disbursement arrangements to give counties conditional grants and assign them the responsibilities of disbursing the funds;
- ii. That indicative programme outputs/ outcomes be provided by National Treasury without delay to facilitate proper scrutiny and interrogation of the BPS and estimates to guide specific recommendations;
- iii. That the National Treasury should consider amendments to the PFM Act, 2012 and the Constitution to give Parliament and other concerned agencies a longer period to consider the Budget Policy Statement;

- iv. The Preventive, Promotive, and RMNCAH (RMNCAH refers to reproductive, maternal, neonatal, child and adolescent Health) Programme should be reviewed to ensure the function is done primarily by the county government such as promoting primary healthcare and environmental health care under the mandate of the county governments;
- v. Implementation of the Managed Equipment Services projects should be hastened and achievable targets set;
- vi. Uptake of renewable energy such as biogas and alternative sources of energy such as solar and wind among the majority of Kenyans is important. The Ministry's outreach programme to propagate and disseminate available renewable energy technologies is done through Energy Centres that currently number 16 centres. There is need to extend this outreach with a view to cover all the counties;
- vii. The State Department of Livestock's programme of livestock resource management and development will have its Vote reduced from 7.1 billion to 6.8 billion. 80% of Kenya is Arid and Semi Arid Lands (ASAL) and 60% of livestock is supporting over 10 million people as the only source of livelihood. The Committee is of the opinion that additional funds should be added to this Vote. This will assist with functions such as increased value addition, establishment of Livestock Disease Free Zones (DFZ), Fast-track Modernization of the -Kenya Meat Commission to increase output and efficiency and enable the Country to meet demand of an expanding export market;
- viii. The Judiciary should prioritize completion of courts under construction before starting new projects;
- ix. Encouraging the use of technology based strategies to reduce the backlog of court cases.
- x. In addition, the Judiciary and other Government agencies should be facilitated with timely releases of Exchequer particularly on development expenditure to allow smooth implementation of capital projects;

- xi. Fast tracking and completion of the National Policy on Public Participation and related relevant legislation in accordance with Article 118 of the Constitution.
- xii. That due to plans by the Office of the Director of Public Prosecutions to establish fifteen prosecution offices in Counties to support its prosecution services, allocations to the office be enhanced;
- xiii. More resources should be allocated towards Independent Electoral and Boundaries Commission to enable the Commission prepare for 2017 General Elections in time, and register 8 million new voters as well as any planned procurement of electronic equipment before next General Elections;
- xiv. That the leasing of motor vehicles by the police and the housing project be domiciled under the National Police Service Commission, and in addition should be fastracked to bring efficiency in the police service;
- xv. In order for the Ministry of Foreign Affairs and International Trade to deliver on its mandate with the reduced resource allocation, it should rationalise foreign missions in strategic countries in line Kenya's economic, international and diplomatic objectives;
- xvi. That a policy should be put in place to guide capital expenditures of foreign missions especially where exorbitant costs are accrued on rental properties;
- xvii. That to realize the Sustainable Development Goal (SDG's) of ensuring inclusive and equitable quality of education and promoting lifelong opportunities for learners, TSC's budgetary allocation be enhanced to enable it employ at least 25,000 teachers in 2016/2017;
- xviii. The Ministry of Education, Science and Technology to review policies and guidelines for Early Childhood Education to ensure uniform standards across all counties and funds be allocated to this effect;
- xix. That the Ministry of ICT prioritizes the allocations (especially under ICT Infrastructure Development programme) towards fast tracking development of horizontal and basic infrastructure in Konza City; completion of County Connectivity Projects in the

shortest time possible and enhancing the implementation of the second phase of National Optic Fiber Backbone Infrastructure with a clear policy on the last mile connectivity; and, the ministry liaising with KPLC to exploit the KPLC fibre to improve and supplement connectivity, among others;

- xx. That the Universal Access Fund initiatives including the undertaking of the second access gap study be rolled out immediately, with the aim of ensuring Kenyans in remote and unserved areas get access to mobile and internet connectivity and other ICT infrastructure activities as envisioned in the fund objectives;
- xxi. That Ksh. 3.778 billion be reallocated for the program on Integrated Regional Development under the State Department for Environment, Natural Resources and Regional Development to the respective counties;
- xxii. That the Budget Policy Statement should state exactly when the second (2<sup>nd</sup>) phase (Nairobi-Naivasha) of construction of the Standard Gauge Railway will begin and the exact route it will follow including extension to Kisumu.

#### **E. Transfer of outstanding county functions**

From its deliberations with the Sectoral Committees of Senate and the comments by the Council of Governors, the Committee noted that several county functions were still being carried out by the National Government in the absence of mutual transfer as envisioned in Article 187 of the Constitution. Thus, the Committee recommends that:

- i. All county health functions be transferred fully, including free maternity program, slum health upgrade and cancer mitigation and control.
- ii. That the programs on crop development and productivity; agribusiness and information management; irrigation and land reclamation, fisheries development; livestock resources management and development and cooperatives development and management be transferred to county governments.
- iii. That key components of functions in the Ministry of Sports Culture and Arts such as library services be transferred to county governments.

- iv. That a legal framework that clearly spells out what constitutes a county function and national function be in place to avoid duplication, particularly under the Ministry of Sports, Culture and the Arts.
- v. Agriculture is a fully devolved function and with functions going to counties, administrative cost at National Government should decrease because the Fourth Schedule of the constitution clearly indicates that National Government's role in Agriculture is policy and research.

#### **F. Division of Revenue**

Briefly, on account of the BPS, DORB and sectoral committee recommendations, the Committee recommends that revenue allocations for 2016/17 be based on the following:

- i. That subject to (B(1)) above, conditional allocations as per Article 202 need to be kept at a minimum in view of Article 187 on transfer of functions between levels of government. In particular, conditional allocations should only address critical issues which would not be funded in any other way. Thus, the justifiable conditional allocations should be Level 5 Hospitals, Free Maternal health Care, Compensation for user fees forgone, leasing of medical equipment and 15% of Road Fuel Levy Fund;
- ii. The Committee notes that some county roads functions are still held by the National Government through the KURA and KERRA. The Committee therefore proposes that the equitable revenue share be enhanced to finance county roads in lines with the recommendation of the CRA;
- iii. The Committee notes that the BPS uses a very conservative revenue growth rate in the computation of the equitable revenue share. Actual revenue realization seems to differ from the growths used in the BPS. Thus the Committee recommends that the official rate of growth of revenue should be used at the minimum to compute the equitable share for 2016/17;
- iv. The Committee observed the need to maintain a stable macroeconomic and fiscal environment of the Kenyan economy. In particular, the Committee is concerned by rising debt burden in the face of weak revenue performance. Therefore, the Committee recommends that the National Government

prioritize its expenditure in the face of county allocations to avoid revenue shortfalls, fiscal deficits, excessive borrowing and in-year budget cuts;

- v. The Committee noted serious under performance of revenues in the current financial year owing to internal administrative weaknesses of the Kenya Revenue Authority (KRA). The Committee therefore recommends an urgent review of the operations of KRA with a view to ensuring efficient, timely and prudent collection of revenues,
- vi. Equally, the Committee urges enhanced fiscal prudence and austerity whenever necessary by both levels of government to enhance efficiency and productivity of public spending. Annual incrementalism in budgets at either level of government is therefore discouraged;
- vii. That the National Treasury should strictly adhere to the approved county cash disbursement schedule and give priority to County disbursements. In addition, there is also need to prioritize and consider critical aspects of some functions like maternity services in the health sector;
- viii. That resources be provided to the Ministry of Education, Science and Technology to ensure each county has at least one nationally funded one TVET institution. This will ensure equity in the provision of TVET education, which is very critical towards the realization of vision 2030.